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GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,

Mumbai-400 005

F.No. 380/44/B/14-RA / 2018

Date of Issue 26.11.2018

ORDER NO. ⁷⁶³/2018-CUS (S Z) / ASRA / MUMBAI/ DATED 28.09.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Commissioner of Customs (Airport) Chennai.

Respondent: Smt. Sithy Jaseema

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus No. 1556/2013 dated 31.10.2013 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Commissioner of Customs (Airport) Chennai, (herein referred to as Applicant) against the Order in Appeal C. Cus No. 1556/2013 dated 31.10.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. On 28.02.2013 the respondent arrived at the Chennai Airport. Examination of her baggage resulted in the recovery of one gold chain weighing 151 gms valued at Rs. 4,43,517/- (Rupees Four lakhs Forty three thousand Five hundred and Seventeen). The gold chain was recovered from her baggage.

3. After due process of the law vide Order-In-Original No. 223 Batch A dated 28.02.2013 the Original Adjudicating Authority ordered absolute confiscation of the goods under Section 111 (d) (l) and (m) of the Customs Act, 1962, and imposed penalty of Rs. 44,000/- under Section 112 (a) of the Customs Act, 1962 on the Respondent.

4. Aggrieved by the said order, the respondent filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus No. 1556/2013 dated 31.10.2013 allowed the gold for re-export on payment of redemption fine of Rs. 80,000/- and also reduced the penalty to Rs. 20,000/- and allowed the appeal of the respondent.

5. Aggrieved with the above order the Applicants have filed this revision application interalia on the grounds that;

5.1 The Order of the Commissioner (Appeals) order granting concession of re-export is not correct as the passenger was acting as a carrier for monetary consideration; The relevant factor is whether the Passenger acted as a carrier or not the ignoring of this fact has resulted in the granting of an unintended benefit to the smuggler; ; The Applicants cited orders in support of their case and prayed that if the impugned order is implemented it would jeopardise the revenue interests irreparably and as the applicant is a foreign national the likelihood of securing the revenue interest would be grim; The Revision Applicants



prayed that the absolute confiscation of the goods be upheld for such an order as deemed fit.

6. In view of the above, the Respondent and his Advocate was called upon to show cause as to why the order in Appeal should be annulled or modified as deemed fit, and accordingly a personal hearing in the case was scheduled held on 17.07.2018, 20.08.2018 and 10.09.2018. However, neither the Respondent nor his advocate attended the said hearing. The case is therefore being decided ex parte on merits.

7. The Government has gone through the case records it is observed that the gold chain recovered from the respondents baggage and it was not declared by the Respondent and therefore the confiscation of the gold is justified. The impugned gold was not indigenously concealed. Import of gold is restricted not prohibited and the ownership of the gold is not disputed. The absolute confiscation in such cases appears to be a harsh option and not justified. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. The section 125 of the Customs Act, 1962 does not differentiate between an owner and a carrier. The Government therefore is inclined to agree with the Order-in-Appeal in allowing the gold on redemption fine and penalty. Government also notes that the Respondent is a foreign national and the Appellate order is right in allowing the gold chain for re-export. Government however notes that the redemption fine and penalties should be commensurate to the offence committed so as to dissuade such acts in future. The Respondent had brought the gold chain and though it was not concealed ingeniously, she did not declare it and therefore the redemption fine and penalties cannot be as low as ordered in the order in Appeal. Government is of the opinion that the impugned Order in Appeal is therefore liable to be modified.

8. The impugned Order in Appeal is set aside. The Government allows redemption of the gold, weighing 151 gms valued at Rs. 4,43,517/- (Rupees Four lakhs Forty three thousand Five hundred and Seventeen) for re-export. The redemption fine imposed is increased from Rs. 80,000/- (Rupees Eighty thousand) to Rs.1,50,000/- (Rupees One lakh fifty thousand) under section



125 of the Customs Act, 1962. The penalty imposed on the Respondent is also increased from Rs. 20,000/- (Rupees Twenty thousand) to Rs. 30,000/- (Rupees Thirty thousand) under section 112(a) of the Customs Act,1962.

9. Revision application is partly allowed on above terms.

10. So, ordered.

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 763/2018-CUS (S Z) /ASRA/MUMBAI

DATED 28-09-2018

To,

1. The Commissioner of Customs, (Airport) Chennai,
New Custom House,
Chennai-600 001.
2. Smt. Sithy Jaseema
D/o Abdul Raul
115 West Namachivaypuram,
Chulaimedu,
Chennai, Tamilnadu.

Copy to:

3. The Commissioner of Customs (Appeals), Chennai.
4. Sr. P.S. to AS (RA), Mumbai.
- ✓ 5. Guard File.
6. Spare Copy.

ATTESTED

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26/11/18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

